

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE MANUEL BIRRUETA,

Defendant.

NO: 2:13-CR-2134-TOR-1

ORDER DENYING DEFENDANT'S  
SECOND MOTION FOR  
RECONSIDERATION

BEFORE THE COURT is Defendant's second Motion for Reconsideration of Order Denying Motion for Sentence Reduction (ECF No. 147). Defendant submitted this motion on his own behalf. The Court has reviewed the pleadings and the record and is fully informed.

Defendant requests the Court to consider all factors before making a decision on his eligibility for a sentence reduction, including his remorse, his record while serving his sentence, the programs and education courses he completed, among other reasons.

1 Defendant is mistaken. These factors certainly inform the Court in deciding  
2 the length of imprisonment to be imposed, but are not considered in determining  
3 whether Defendant is eligible for a sentencing reduction because of Amendment  
4 782. Dispositive here, is the Courts alternative sentencing finding that the 135  
5 month sentence straddled both the original and soon to be amended guideline  
6 calculation and that the 135 month sentence was then the appropriate sentence,  
7 regardless of which version was used. Because of this finding, Defendant is not  
8 eligible for a sentencing reduction, no matter how admirable Defendant's post  
9 sentencing conduct. Defendant's second motion for reconsideration is therefore  
10 denied.

11 **IT IS ORDERED:**

12 Defendant's second Motion for Reconsideration of Order Denying Motion  
13 for Sentence Reduction (ECF No. 147) is **DENIED**.

14 The District Court Executive is directed to enter this Order and furnish  
15 copies to the parties.

16 **DATED** February 26, 2016.



*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge